

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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| DANIEL J. SIMMS, aka TERRY WEEKS, |) | CASE NO.: C06-0942-RSM |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | REPORT AND RECOMMENDATION |
| |) | |
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

Petitioner Daniel Simms has filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner is currently incarcerated in the King County Department of Adult and Juvenile Detention where he is awaiting sentencing on charges of first degree robbery, second degree assault, and first degree unlawful possession of a firearm. (*See* Dkt. No. 1.) Petitioner indicates in his petition that he was convicted on June 29, 2006, and that he is to be sentenced on July 25, 2006. (*See id.*)

Under 28 U.S.C. § 2254, the district court may entertain an application for a writ of habeas corpus only from an individual in custody pursuant to the judgment of a state court. This Court has no jurisdiction to intervene in ongoing state court proceedings. *See Demos v. U.S. Dist. Court for E. Dist. of Wash.*, 925 F.2d 1160, 1161 (9th Cir. 1991), *see also*, 28 U.S.C. § 1651. Because

petitioner has not yet been sentenced for his crimes, no judgment has yet been entered against. This Court therefore lacks jurisdiction to consider the instant petition.¹

Accordingly, this Court recommends that petitioner's federal habeas petition be dismissed without prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 6th day of July, 2006.



Mary Alice Theiler
United States Magistrate Judge

¹ Petitioner is advised that once he is sentenced, and a judgment is entered by the King County Superior, his federal habeas claims will become eligible for review by this Court only *after* he has properly exhausted his state court remedies with respect those claims. *See* 28 U.S.C. § 2254(b)(1).